

ANTHONY R. GALLAGHER
Federal Defender
Federal Defenders of Montana
104 2nd Street South, Suite 301
Great Falls, Montana 59401
anthony_gallagher@fd.org
Phone: (406) 727-5328
Fax: (406) 727-4329
Attorneys for Defendant

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
BILLINGS DIVISION**

UNITED STATES OF AMERICA,
Plaintiff,
vs.
JESUS YEIZON DENIZ MENDOZA,
Defendant.

Case No. CR 15-93-BLG-SPW

**RENEWED MOTION TO
APPOINT LEARNED COUNSEL**

On October 22, 2015, Defendant, Jesus Yeizon Deniz Mendoza, by and through his Counsel, moved this Honorable Court to appoint an attorney “learned in the law applicable to capital cases” to assist in the representation of Mr. Mendoza. (Doc. 32). That Motion is incorporated herein by reference. By Order dated October 26, 2015, this Court denied that Motion without prejudice. (Doc. 34). Mr. Mendoza respectfully renews the Motion to Appoint Learned Counsel.

On August 26, 2015, the undersigned entered his appearance as co-counsel along with David Merchant and Steven Babcock, not as Learned Counsel, but only as a member of the trial team. The Court indicated in the Order denying the Motion to Appoint Learned Counsel that at the status conference held on that date “the defense represented to the Court that Mr. Gallagher would act as ‘learned counsel’ for Deniz-Mendoza.” (Doc. 34, pages 1-2). If that impression was left with the Court, it was in error. The undersigned does not have recent death penalty experience, nor the specialized training with the new procedures in capital cases. At the time of the status conference, the undersigned, as Federal Defender for the District of Montana, was in consultation with the Administrative Office of the United States Courts, Defender Services Office, Death Penalty Resource Counsel, in order to formulate a recommendation for appointment of Learned Counsel as contemplated by Title 18 U.S.C. § 3005.

After considering several attorneys learned in the law applicable to capital cases, the undersigned recommended Mr. Don Knight as Learned Counsel. Unlike the attorneys currently assigned from the Federal Defenders office, Mr. Knight has extensive knowledge of the government’s current capital prosecution protocol as well as recent death penalty litigation experience. He is a frequent speaker on a wide range of topics regarding the federal death penalty, and has been appointed as

Learned Counsel in two cases that were concluded in 2015 in the United States District Court for the Eastern District of California. In those cases, Mr. Knight also worked with the Federal Public Defender's office. A summary of Mr. Knight's qualifications is attached hereto and incorporated herein as Exhibit No. 1.

This Court has always recognized the Federal Defenders of Montana, Inc., as a law firm for a variety of purposes. This is particularly significant in the present case. Although two assistants were initially assigned to Mr. Mendoza's case, then were joined as co-counsel of record by the undersigned, this does not disentitle Mr. Mendoza to an additional court-appointed lawyer, one learned in the law applicable to capital cases. Stated differently, the Federal Defender's office represents one appointment, and Mr. Knight's would be the second.

Appointment of the Federal Defenders of Montana, and assignment of three attorneys from that organization, none of whom has recent experience in capital cases under the new federal protocol, does not create any presumption against appointment of an attorney who does possess such experience. The undersigned submits that appointment of an attorney experienced in the defense of death penalty cases is both authorized under the law and justified under the facts. This renewed motion seeks the second appointment of counsel under 18 U.S.C. § 3005, an appointment of Learned Counsel.

The Federal Defender for the District of Montana renews his recommendation for the appointment of Donald R. Knight of Littleton, Colorado, as counsel learned in the law applicable to capital cases.

RESPECTFULLY SUBMITTED this 27th day of October, 2015.

/s/ Anthony R. Gallagher

**CERTIFICATE OF SERVICE
L.R. 5.2(b)**

I hereby certify that on October 27, 2015, a copy of the foregoing document was served on the following persons by the following means:

1, 2 CM-ECF
3 Mail

1. CLERK, U.S. DISTRICT COURT
2. LORI HARPER SUEK
JOHN D. SULLIVAN
Assistant United States Attorneys
United States Attorney's Office
2601 2nd Ave. North, Suite 3200
Billings, MT 59101

JOSEPH E. THAGGARD
Assistant United States Attorney
United States Attorney's Office
901 Front Street, Suite 1100
Helena, MT 59626
Counsel for the United States

3. JESUS DENIZ MENDOZA
Defendant

/s/ Anthony R. Gallagher